IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 35 of 2004
to
FIRST APPEAL No. 57 of 2004
With
CIVIL APPLICATION NOS.11731/06 TO 11737/06

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
RAJPUT MADHAVSINH KHODUBHA - Defendant(s)

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Appearance :
Mr.S.S.Shah,learned G.P. with Mr.L.R.Pujari,learned AGP for Appellant(s) : 1 - 2.
MR DEEPAK P SANCHELA,learned advocate for the claimants in First Appeal Nos.35 to 50 of 2004.
Mr.Amar Mithani,learned advocate for the claimants in First Appeal Nos.51 to 57 of 2004.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 13/09/2006

13/10/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, the appellants i.e. (1) the State of Gujarat and (2) the Executive Engineer, Junagadh have challenged the legality of common judgment and award dated April 16,2003 rendered by the learned 5th Joint Civil Judge (SD), Junagadh in Land Reference Case No.16 of 2000 to Land Reference Case No.38 of 2000 by which the claimants are awarded additional compensation at the rate of Rs.16/- per sq.mt. for Bagayat land and Rs.13/-per sq.mt. for Jirayat land, over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.4/- per sq.mt. for Bagayat land and Rs.3/- per sq.mt. for Jirayat land, for their acquired lands.

2. A proposal was made to the State Government to acquire agricultural lands of village Bhatgam, Taluka Mangrol, District Junagadh for the public purpose of Noli Lambora Lake Project. On consideration of the said proposal, the State Government was satisfied that the lands of village Bhatgam were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on May 10,1995. Thereafter, the land owners were served with notices as required under Section 4 of the Act. The land owners objected to the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Bhatgam, which were specified in the Notification issued under Section 4 of the Act and published in the Official Gazette on May 10,1995, were needed for public purpose of Noli Lambora Lake Project. Therefore, a declaration under Section 6 of

the Act was made, which was published in the Official Gazette on November 1, 1995. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.31.25 Ps. per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.4/- per sq.mt. for Bagayat land and Rs.3/- per sq.mt. for Jirayat land by his awarded dated October 6,1997. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, by filing applications they required the Special Land Acquisition Officer to refer the matter to the Court for determination of just amount of compensation payable to them. Accordingly references were made to the District Court, Junagadh, which were numbered as Land Reference Case No.16 of 2000 to Land Reference Case No.38 of 2000.

3. On behalf of the claimants witness Madhavsinh Khodubha Chudasma was examined at Exh.10. According to him the lands acquired were situated near the lands of village Mangrol and that each claimant was able to raise 3 crops in a year because water was available round the year. What was maintained by the said witness in his testimony was that the offer of compensation made by the Special Land Acquisition Officer was inadequate and, therefore, the claimants were entitled to enhanced compensation as claimed in the applications submitted under Section 18 of the Act. In his cross-examination by the learned Government Pleader it was mentioned by him that before determining the market value of the lands acquired, the relevant factors were not taken into consideration by the Special Land Acquisition Officer. Another witness, namely, Pitha Meraman was examined on behalf of the claimants at Exh.79. This witness produced original agreement to sell executed by him relating to Survey No.123 admeasuring 1 Acre for a consideration of Rs.2 lacs to Bhikabhai Jivabhai at Exh.80. According to him Survey No.123 was acquired by the State Government and, therefore,

the agreement to sell was cancelled and final sale deed was not executed. It was also mentioned that in view of cancellation of agreement to sell, he had given back Rs.50,000/- to Bhika Jiva. This witness also produced another agreement to sell executed by him relating to Survey No.150/1 admeasuring 0 Acre 8 Gunthas of village Bhatgam to one Jagmal Arjan at Exh.81. According to him the agreement to sell Survey No.150/1 of village Bhatgam was executed on May 9,1994 at Mangrol but subsequently the same was cancelled on February 23,1997 and that the consideration received was returned to the purchaser. The reason given by this witness for cancellation of the agreement to sell was that Survey No.150/1 was also acquired for Noli Reservoir. This witness further produced sale deed executed by Ahir Pitha Mysorbhai Solanki to Ahir Govind Vikrambhai on July 28, 1995 at Exh.83. According to this witness Ahir Pitha Mysorebhai Solanki had appended his thumb impression in his presence on sale deed dated July 28,1995 and that sale deed was reduced into writing as per the instructions given by Ahir Pitha Mysorebhai Solanki. What was mentioned by the witness

was that the consideration of sale deed i.e. Rs.1 lac was paid to the seller in his presence. In his cross-examination the witness denied the suggestion that the claimants were not able to raise any crop because the land had become salty due to sea water. The suggestion made to this witness that the price of the land was Rs.5000/- to Rs.10,000/- per Vigha was also emphatically denied by him. The suggestion made to the witness that during the pendency of acquisition, sale deed was executed in order to claim higher rate of compensation was also denied by him.

4. Further another witness Jagmal Arjan was examined by the claimants at Exh.84. This witness stated before the Court that Exh.81 was signed by him and that he had executed the agreement to sell the land mentioned therein for a sum of Rs.4 lacs. The witness was shown agreement to sell produced at Exh.80 and after looking to the contents of the said document, he stated that it was bearing his signature. It was mentioned by the said witness that by Exh.80 the land was agreed to be sold for a price of Rs.2 lacs per Vigha. In his cross examination by

the learned Government Pleader, the witness denied the suggestion that he was deposing falsely before the Court at the instance of Madhavsinh Khodubha. Yet another witness, namely, Pithabhai Mysorbhai was examined by the claimants at Exh.85. This witness was shown Exh.83 and after looking to the contents of the same, he stated before the Court that it was relating to his Survey No.164/3 admeasuring 30 Gunthas. According to this witness he had sold his Survey No.164/3 by a deed dated July 28,1995 to Govindbhai Vikram Solanki of village Bhatgam for a sum of Rs.1 lac. It was mentioned by this witness that he had received the consideration and also appended his thumb impression on Exh.83.

5. In his cross examination by the learned Government Pleader for the acquiring authorities it was mentioned by him that the land, which he had sold vide Exh.83, was irrigated and fertile land and that in comparison to that land, the quality of the lands acquired was inferior. It was also mentioned by this witness that his Survey No.164/3, which was sold by sale deed dated July 28,1995, was situated near the

village and had therefore fetched more price. What was maintained by the witness in his cross-examination was that if S.No.164/3 had not been located near the village and had not been fertile, as was the case with the acquired lands, it would have roughly fetched price between Rs.25,000/- to Rs.30,000/- per Vigha. It was also mentioned by the witness that the lands acquired were situated at a distance from village and were of inferior quality and that they would not have fetched the price Survey No.164/3 had fetched, if sold in the open market.

6. On behalf of the acquiring authorities witness Pareshkumar Pravinchandra Modi was examined at Exh.99. It was mentioned by this witness that the claimants had got executed agreements to sell in collusion with their relatives with a view to claiming higher compensation and, therefore, those agreements to sell should not be taken into consideration by the Court. The suggestion made on behalf of the claimants that price of Bagayat land round about May 10, 1995 i.e. the day on which Notification issued under Section 4 of the Act was

published in the Official Gazette, was Rs.31.25 Ps. per sq.mt. for irrigated lands and Rs.20/- per sq.mt. for non-irrigated lands was denied by him.

7. On appreciation of evidence adduced by the authorities, the Reference Court was of the opinion that two agreements to sell produced by the claimants at Exh.80 and 81 were of little importance in determining the market value of the lands acquired inasmuch those agreements to sell were subsequently cancelled. The Reference Court was of the opinion that sale deed produced by the claimants at Exh.83 relating to Survey No.164/3 of village Bhatgam was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. The learned Judge noticed that Survey No.164/3 admeasured 0-30 Gunthas and the price paid was Rs.1 lac and, therefore, it would indicate that the land was sold at the rate of Rs.3333 per Are. The Reference Court was of the opinion that in view of smallness of size of Survey No.164/3 and its location near the village, appropriate deduction was required to be made for the purpose of determining

market value of the lands acquired, which totally admeasured 29 Hector 80 Are and 62 sq.mts. After making appropriate deductions, the learned Judge was of the opinion that the claimants would be entitled to an additional compensation at the rate of Rs.16/- per sq.mt. for Bagayat lands and Rs.13/- per sq.mt. for Jirayat lands, over and above the compensation awarded to them by the Special Land Acquisition Officer, which has given rise to the above numbered appeals.

8. This Court has heard Mr.Deepak Sanchela, learned counsel for the claimants in First Appeal No.35/04 to First Appeal No.50/04 as well as Mr.Amar Mithani, learned counsel representing claimants in First Appeal Nos.51/04 to 57/04 and Mr.S.S.Shah,learned Government Pleader with Mr.L.R.Pujari, learned AGP for the respondents. This Court has also considered the paper book prepared in First Appeal Nos.35/04 to First Appeal No.57/04 which contains oral as well as documentary evidence adduced by the parties before the Reference Court.

9. From the record of the case it is evident that the claimants had relied upon 3 documents, namely, Exh.80, Exh.81 and Exh.83 to substantiate their claim that they were entitled to enhanced compensation as claimed in the Reference Applications. Exh.80 and Exh.81 were agreements to sell. The record does not indicate that any final sale deed was executed pursuant to any of the two agreements to sell. On the contrary, the record establishes that subsequently those two agreements to sell were cancelled and amount received as earnest money was returned to the buyer. Under the circumstances this Court is of the opinion that the Reference Court did not commit any error in not placing reliance upon Exh.80 and Exh.81 while determining the question whether the claimants were entitled to compensation as claimed in the Reference Applications. This left the Reference Court with no option but to consider Exh.83. Exh.83 is a deed relating to Survey No.164/3 of village Bhatgam, which was executed on July 28,1995. The measurement of the land sold was 0 Are 30 Gunthas and the consideration for which it was sold was mentioned to be Rs.1 lac, which would indicate that the land was

sold at the rate of Rs.3333/- per Are. However, it is relevant to notice that the extent of acquired lands was 29 Hectors 80 Are - 62 sq.mts. Therefore, this Court is of the opinion that the Reference Court was justified in deducting more than 50% from the price of sale of Survey No.164/3 because of its smallness in size and location while determining the market value of the lands acquired in the instant case. However, the error committed by the Reference Court is that it has ignored altogether, the statements made by the seller of the said survey number, in his cross-examination. The seller of Survey No.164/3, i.e. witness Pithabhai Mysorbhai has admitted in terms, in his cross-examination that Survey No.164/3 had fetched more price because it was situated near village Bhatgam and was highly fertile and if it had not been located near the village and had not been fertile, it would have fetched price between Rs.25,000/- to Rs.30,000/- per Vigha. It is further admitted by this witness that the lands acquired were situated away from the village and were of inferior quality and therefore would not fetch the price which was realised by sale of his Survey No.164/3.

Therefore, this court is of the opinion that on the basis of sale deed produced by the claimant at Exh.83, the Reference Court was not justified in awarding additional compensation to the claimants at the rate of Rs.16/- per sq.mt. for Bagayat lands and Rs.13/- per sq.mt. for Jirayat lands but should have determined the market value of the lands acquired in the instant case on the basis that real price of Survey No.164/3 was between Rs.25,000/- to Rs.30,000/- per Vigha for determining the market value of the lands acquired. From the catena of decisions of the Supreme Court it is evident that it is the duty of the Court to award just compensation to the claimants, whose lands have been acquired under the provisions of the Act. The function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of notification under Section 4(1). The Supreme Court in the State of Gujarat and others v. Rama Rana and another – 1997(3) GLR 1954 did not reject the oral evidence of the witnesses on the ground that best evidence was not adduced by the parties, because it was of the firm opinion that it was statutory duty of

the Court to the society to ascertain the market value of the lands acquired by subjecting the oral evidence to great scrutiny and applying the test of normal prudent man i.e. whether he would be willing to purchase the land at the rates proposed by the Court. On the touchstone of this principle, the Supreme Court evaluated the evidence objectively and dispassionately and reached a finding on compensation. This very exercise will have to be undertaken by the Court in the instant case for the purpose of determining just amount of compensation payable to the claimants. What is relevant to notice in the instant case is that it was suggested on behalf of the acquiring authorities to witness Pithabhai Mysorebhai in his cross-examination that the price of the Survey No.164/3 was between Rs.25,000/- to Rs.30,000/- per Vigha and the said witness had frankly admitted the said suggestion. Meaning thereby even according to the Government the price of the lands acquired ranged between Rs.25,000/- to Rs.30,000/- per Vigha. On close scrutiny of the evidence of witness Pithabhai Mysorebhai it becomes evident that the price of

Survey No.164/3, which was subject matter of Exh.83, would have been between Rs.25,000/- to Rs.30,000/- per Vigha if it had the same inferior quality of fertility as that of the acquired lands and had been situated away from the village as acquired lands were situated. It may be mentioned that if Survey No.164/3 admeasuring 0 Are 30 Gunthas had been sold at the rate of Rs.30,000/- per Vigha then the price would come to Rs.10 per sq.mt. As a result of which, the claimants would be entitled to additional compensation at the rate of Rs.6/- per sq.mt. for Bagayat lands and Rs.5/- per sq.mt. for Jirayat lands on the basis of Exh.83. The Reference Court was not justified in awarding additional compensation to the claimants at the rate of Rs.16/- per sq.mt. for Bagayat land and Rs.13/- per sq.mt. for Jirayat land on the basis of Exh.83 and, therefore, to that extent the impugned award will have to be modified.

10. The record of the appeals would indicate that Civil Application No.64 of 2004 to Civil Application No.86 of 2004 were filed for claiming ad interim relief. The ad interim relief granted was confirmed

subject to certain conditions, which are to be found in order dated March 3,2004. Condition No.(b) was as under:

> "(b) The applicants have deducted out of total amount payable to the applicants as per the interim order dated 12.1.2004, an amount of Rs. 2,78,883/- as TDS under section 194-A of the Income-tax Act for being paid to the Income Tax. The respondents have raised objection as against the said deduction as the said provision 194-A is applicable only to firms and to persons other than individuals or Hindu Undivided Family and the respondents are not required to pay the said amount by way of income tax and, therefore, the deduction is unauthorised. It is further contended that in any case, the payment of the amount of additional compensation including interest to each of the claimants 11 to 12 years after the date of taking possession is not taxable in lump sum but should be assessed as spread over for the entire period of 11 to 12 years in case any of them is liable to pay income tax or

TDS. Without expressing any opinion,we keep this question open at this stage and leave the parties either to make a separate application or to get it decided at the time of final disposal of First Appeals after hearing Income Tax Department, if necessary."

11. The learned advocates for the parties on instructions have agreed that the question whether the payment of amount of additional compensation, including interest to each of the claimants 11 to 12 years after the date of taking possession is taxable in lump sum or should be assessed as spread over for the entire period of 11 to 12 years in case any of them is liable to pay income tax or TDS shall be got adjudicated by the parties from the competent officer discharging duties under the provisions of the Income Tax Act, 1961 and, therefore, this Court has refrained from deciding the said issue at the time of disposal of these appeals. It is clarified that the respondents would be at liberty to collect necessary data from the appellants regarding payment of Rs.2,78,883/- as TDS under Section 194-A of the

Income Tax Act for the purpose of getting the issue decided, which is referred to above.

12. It may be mentioned that Ms.Badarunisa Nizamuddin Shaikh had filed Civil Application No.243 of 2005 to Civil Application No.249 of 2005 in First Appeal No.51 of 2004 to First Appeal No.57 of 2004 praying that she be impleaded as respondent No.5 in First Appeal No.51 of 2004 to First Appeal No.57 of 2004. Those applications were allowed by the Court vide order dated September 15, 2006. Ms.Badarunisa Nizamuddin Shaikh, who is ordered to be impleaded as respondent No.5 in First Appeal No.51 of 2004 to First Appeal No.57 of 2004, has filed Civil Application No.11731 of 2006 to Civil Application No.11737 of 2006 in First Appeal No.51 of 2004 to First Appeal No.57 of 2004 praying interalia to (i) direct the respondents No.1 to 4 to deposit the amount paid to them by the Special Land Acquisition Officer, (ii) direct the respondents No.1 to 4 to deposit the amount withdrawn by them in the Reference Court as per order dated March 3, 2004, passed in Civil Application No.80 of 2004, or (iii) direct the

Special Land Acquisition Officer to pay the amount to the applicant which may be found payable by the Reference Court in Reference Cases No.311/2005, 312/2005, 313/2005, 314/2005 and 315/2005 made under Section 30 of the Act or, (iv) to take appropriate action to protect the interest of the applicant.

13. This Court has considered the prayers made in Civil Application No.11731 of 2006 to Civil Application No.11731 of 2006. Mr.Amar D.Mithani, learned counsel for the respondents No.1 to 4 in First Appeal No.51 of 2004 to First Appeal No.57 of 2004, on instructions of advocate Mr.B.B.Parmar, who is also appearing on behalf of the respondents No.1 to 4 in First Appeal No.51 of 2004 to First Appeal No.57 of 2004 and who had represented the respondents No.1 to 4 before the Reference Court which had delivered the impugned judgment and award and who continues to represent them in Land Reference Case Nos.311/2005, 312/2005, 313/2005, 314/2005 and 315/2005, states that the respondents No.1 to 4 are ready to file an Undertaking on oath stating interalia that they shall abide by the decision that

may be rendered by the Reference Court in Land Reference Case Nos.311/2005, 312/2005, 313/2005, 314/2005 and 315/2005, and that they shall not challenge the judgment and award which may be delivered by the Reference Court in above-mentioned Reference Cases before any higher forum available under the law and that if the award is passed in favour of Ms.Badarunisa Nizamuddin Shaikh, who is applicant in Civil Application No.11731 of 2006 to Civil Application No.11737 of 2006 in First Appeal No.51 of 2004 to First Appeal No.57 of 2004, they will deposit the amount payable to her within three weeks from the date of decision of the Reference Court. In view of the statement made at the Bar by Mr.Amar D.Mithani, learned counsel for the respondents No.1 to 4, the respondents No.1 to 4 are directed to file an Undertaking as mentioned by their learned counsel before the Court within two weeks from today, a copy of which shall be handed over to the learned advocate for Ms.Badarunisa Nizamuddin Shaikh, who is applicant in Civil Application No.11731 of 2006 to Civil Application No.11737 of 2006. As the respondents No.1 to 4 in First Appeal

No.51 of 2004 to First Appeal No.57 of 2004 have agreed and undertaken before the Court to make payment of the amount which may be found payable by the Reference Court, in Land Reference Case Nos.311/2005, 312/2005, 313/2005, 314/2005 and 315/2005, to Ms.Badarunisa Nizamuddin Shaikh within three weeks from the date of decision of the Reference Court, Civil Application No.11731 of 2006 to Civil Application No.11737 of 2006 have become infructuous and deserve to be disposed of accordingly. Mr.A.R.Thakkar, learned counsel for Ms.Badarunisa Nizamuddin Shaikh, who is respondent No.5 in First Appeal No.51 of 2004 to First Appeal No.57 of 2004, has made a grievance that inspite of the direction of the Court dated February 14, 2005, in Civil Application No.243 of 2005 to Civil Application No.249 of 2005, which were filed in First Appeal No.51 of 2004 to First Appeal No.57 of 2004, the Collector has not made Reference in two cases. Mr.Amar D.Mithani, learned counsel for the respondents No.1 to 4, has fairly stated at the Bar that in all the Collector should have made seven References and not five References. Under the

circumstances, the appellant, i.e. the Special Land Acquisition Officer, Junagadh, is hereby directed to refer the dispute raised by Ms.Badarunisa Nizamuddin Shaikh in two matters forthwith to the Reference Court under Section 30 of the Act so that those two reference cases also can be disposed of along with Land Reference Case Nos.311/2005, 312/2005, 313/2005, 314/2005 and 315/2005.

14. For the foregoing reasons, all the appeals succeed. The Judgment and award dated April 16,2003 rendered by the 5th Joint Civil Judge (SD), Junagadh in Land Reference Case No.16/2000 to Land Reference Case No.38/2000 awarding additional compensation to the claimants at the rate of Rs.16/- per sq.mt. for Bagayat land and at the rate of Rs.13/- per sq.mt. for Jirayat land, over and above the compensation determined as payable to the claimants by the Special Land Acquisition Officer, is hereby modified and it is held that the claimants would be entitled to additional compensation at the rate of Rs.6/- per sq.mt. for Bagayat lands and Rs.5/- per sq.mt. for Jirayat lands, over and above the compensation

determined as payable by the Special Land Acquisition Officer. The rest of the directions contained in the impugned award are not interfered with at all and are hereby upheld. The appeals are allowed to the extent indicated hereinabove only. There shall be no order as to costs. The interim order further indicates that each of the claimants was permitted to withdraw 50% of the amount payable to each of them without giving any security while rest of the 50% amount was directed to be invested in Fixed Deposit account by the executing court initially for a period of 2 years in any Nationalized Bank to be renewed from time to time till the appeals were finally heard and disposed of. The appeals are now finally disposed of and as additional compensation payable to the claimants is reduced by the Court as indicated in this judgment, the claimant/claimants are directed to deposit the difference between the amount withdrawn and the amount awardable to them pursuant to this judgment with Reference Court on or before December 31,2006. The appellant No.1 is directed to place appropriate calculation before the Reference Court within 15 days from the date of receipt of the writ,

on the basis of which if difference in amount is not deposited by the claimant/claimants in the Reference Court on or before December 31,2006, the Reference Court would be entitled to recover the same from the claimant/claimants in accordance with law. The appellants would also be entitled to the amounts which were invested in Fixed Deposits pursuant to interim order dated March 3,2004 passed by this Court in Civil Application No.64 of 2004 to Civil Application No.86 of 2004. The Registry is directed to draw the decree in terms of this judgment.

15. In view of the directions contained in judgment dated 13.9.2006 and 13.10.2006, rendered in First Appeal No.51 of 2004 to First Appeal No.57 of 2004, this Court is of the opinion that Civil Application No.11731 of 2006 to Civil Application No.11737 of 2006 do not survive and are disposed of as having become infructuous.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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